

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF FINANCIAL ASSURANCE
ABILITY TO PAY GUIDANCE
PARTNERSHIPS**

Effective: 5-1-1998; amended: 7-1-2002

The policies and procedures set forth in this document are intended solely for the guidance of employees of the Department of Environmental Quality (DEQ). They are not intended to, nor do they constitute rulemaking by DEQ. They may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. Whether and how DEQ applies this guidance in any given case will depend on the facts of the case.

1. Introduction

This guidance applies in the following situations:

- The Department of Environmental Quality (Department) has identified a partnership as the responsible person (RP) for a petroleum release or discharge of oil and the partnership claims inability to pay for remediation costs or the amount due pursuant to applicable cost recovery guidance.
- A partnership claims inability to pay civil charges during an enforcement action.

2. Authority

Section 9003(h) of Subtitle I of the Resource Conservation and Recovery Act (RCRA) and Virginia Code § 62.1-44.34:11 provide authority for considering an RP's ability to pay in State Lead referrals and in cost recovery matters. Virginia Code § 10.1-1316 of the Air Pollution Control Law provides authority for considering a person's ability to pay a civil charge in enforcement cases involving violations of the APCL and applicable regulations. Pursuant to the Department's Enforcement Manual, the Department may reduce a calculated civil charge where a facility demonstrates that a significant economic hardship would result from imposition of the full civil charge.

3. Definitions

The definitions contained in RCRA Subtitle I, the State Water Control Law (Articles 9 through 11), the Air Pollution Control Law and the Virginia Waste Management Act apply.

4. Review Timing

4.1 Enforcement Program

The Office of Financial Assurance (OFA) generally performs the Ability to Pay analysis upon the request of Regional Office (RO) staff during consent order negotiations.

4.2 Petroleum Site Remediation Program

OFA performs an Ability to Pay analysis at the request of RO staff to determine whether it is appropriate to clean up a site through the State Lead program or to require the RP to conduct the cleanup. Generally, for any site that is classified as a Priority One¹ site or a site which needs assessment to determine the priority, the RO case manager need not wait for the Ability to Pay analysis results to proceed with State Lead referral². For any other type of site where the RP claims inability to pay for the necessary remediation, the RO case manager should request an Ability to Pay analysis and wait for the results before enrolling a site in the State Lead Program.

OFA staff review the application for completeness within fifteen (15) days of its receipt and complete the Ability to Pay analysis and issue a written decision within thirty (30) days of receipt of a complete application. This 30-day period may be extended if the analysis results warrant further inquiry into the applicant's financial status.

5. Application Procedures

5.1. Application Requests

When a partnership RP has claimed inability to pay for response costs or civil charges, RO personnel may request an Ability to Pay analysis from OFA. The first step is to request an Ability to Pay application from OFA. The request must include:

- RP name.
- RP address.
- RP telephone number(s).

¹ A Priority One site is a site where humans or other sensitive receptors (usually a biological receptor or a surface water stream) are impacted by the release. (State Lead Program Interim Operations Guide, Virginia Department of Environmental Quality (December 15, 1995).)

² However, in most cases, an Ability to Pay analysis should be performed after the referral to determine whether the Department will attempt to recover State Lead costs from the RP at a later date.

- Pollution complaint number (PC#), permit number, or registration number (if applicable).
- Site Name.
- Number and type of occurrences.
- Release report date (for petroleum releases or discharges of oil).
- Identification of the RP's type of business entity as any one of the following:
 - Individual/sole proprietorship;
 - Bankrupt;
 - Corporation;
 - Partnership;
 - Estate;
 - Non Profit Organization;
 - Local Government;
 - Other (limited liability company, other entity, etc.);
- Preferred application filing deadline, if less than thirty (30) days.

Note: Only RPs identified as partnerships are evaluated pursuant to this procedure.

5.2 Application Preparation

When RO staff request an Ability to Pay application and provide the information listed in subsection 5.1. to OFA, the Financial Responsibility Manager (FRM) prepares the Ability to Pay Application Instructions (Appendix 2) as indicated below and sends the Application Instructions and the Application (Appendix 3) to the RP at the address indicated in subsection 5.1.

5.2.1 Applicant Information

The FRM fills in the applicant name, address, telephone number, date the application was sent, PC#/permit#/Registration# (if applicable) and site name on the Application Instructions before mailing and marks on the instruction form the documents which the RP must include with the application.

5.2.2 Documents to Request for Partnership Applicants

Partnership Application: At her discretion, the FRM may require general partnership applicants to complete a Partnership Ability to Pay application covering

the partnership as an entity or, in the alternative, Individual or Corporate Ability to Pay applications for each general partner.

Limited partnership applicants must complete a Partnership Ability to Pay application.

Financial Responsibility Demonstration for Petroleum Releases: In the case of a petroleum release or discharge of oil, if the partnership had a duty to demonstrate financial responsibility at the time of the release report, the partnership must submit the financial responsibility demonstration mechanism in effect at the time of the release report along with the application.

Insurance Policy: In the case of a petroleum release or discharge of oil, partnership applicants must submit a copy of any/all business insurance policy(ies) in effect at the time of the release report. At the FRM's discretion, an insurance certification (Appendix 4) may be requested in lieu of the policy(ies).

Income Tax Verification: The FRM may require the RP to submit a signed Form 8821 which allows the Department to obtain copies of the RP's tax returns directly from the Internal Revenue Service.

Other: The partnership applicant must submit any additional information requested in the Application Instructions or required due to the specific circumstances of the claim.

5.3 Application Submittal

The RP must submit an original, signed Ability to Pay application(s) to the mailing address and by the filing deadline specified in the Application Instructions.

5.4 Application Tracking

OFA staff update the necessary Ability to Pay fields in the relevant Comprehensive Environmental Database System (CEDS) module at the time of application issuance and receipt and when the evaluation is complete. OFA staff should utilize this database to track filing deadlines and claim disposition.

6. Review Procedures

6.1 General Partnerships

Because general partners are individually liable for the debts of the partnership, the FRM may evaluate a general partnership's ability to pay by performing an individual ability

to pay analysis for each general partner (or a corporate ability to pay analysis if the general partner is a corporation) and adding together the amount each general partner is able to pay. Under this method, the RP must submit the standard documentation required for an individual Ability to Pay analysis or a corporate Ability to Pay analysis for each general partner, in addition to a list of all of the general partners (Appendix 1). OFA evaluates the Individual Ability to Pay applications by utilizing the Environmental Protection Agency's (EPA's) INDIPAY model which is described in detail in the OFA Individual Ability to Pay Guidance. OFA staff evaluate the Corporate Ability to Pay application using EPA's ABEL model, which is described in detail in the OFA Corporate Ability to Pay Guidance.

In the alternative, the FRM may assess the general partnership's ability to pay as a whole by performing a corporate Ability to Pay analysis using the Corporate Ability to Pay Guidance. Modifications of the Corporate Ability to Pay Guidance necessary to evaluate general partnerships will be documented in the general partnership ability to pay file. If this method is used, the general partnership must complete the partnership ability to pay application form (Appendix 3). OFA staff evaluate the Partnership application using EPA's ABEL model, which is described in detail in the OFA Corporate Ability to Pay Guidance.

6.2 Limited Partnerships

Because the liability of limited partners is limited to their contribution to the partnership (or according to the terms of the limited partnership agreement), OFA staff should use the ABEL model described in the Corporate Ability to Pay Guidance to evaluate the ability to pay of limited partnerships. Modifications of the Corporate Ability to Pay Guidance necessary to evaluate limited partnerships are documented in the limited partnership ability to pay file. Limited partnerships must complete the partnership ability to pay application form (Appendix 3).

6.3 Conclusion of Financial Analysis

6.3.1 Ability to Pay (ATP) Total Is "0"

Civil Charge: Where the ATP total is 0, OFA will communicate the results of the analysis to the RO. The RO will evaluate the appropriate civil charge in accordance with the Enforcement Manual.

Petroleum Release or Discharge of Oil: Where the ATP total is 0, the RP is considered unable to pay and the RO may refer the contaminated site for State Lead cleanup after determining there are no other viable RPs for the site.

6.3.2 ATP Total Is Greater Than "0" but less than Cleanup Cost/Civil Charge

Civil Charge: Where the ATP total is more than 0 but less than the calculated civil charge, the FRM communicates the ATP total to the RO as the portion of the civil charge that the analysis indicates the RP is able to pay. The RO will evaluate the appropriate civil charge in accordance with the Enforcement Manual.

Petroleum Release or Discharge of Oil: Where the ATP total is more than 0, the FRM compares the ATP total to the estimated cost of performing the next phase of cleanup. This cost estimate may be obtained from the RP or from the RO responsible for overseeing the site cleanup. Where the ATP total is less than the cleanup estimate, the RP is considered unable to pay and the RO may refer the contaminated site for State Lead cleanup unless other viable RPs exist.

Cost Recovery:

ATP Total Less Than Cost Recovery Floor

Where the ATP total is also less than the cost recovery floor (i.e., the estimated administrative cost of pursuing a cost recovery claim), then the FRM notes the file that Department will not pursue a cost recovery against the RP to recover any State Lead funds spent at the site and make the appropriate entry in CEDS.

ATP Total More Than Cost Recovery Floor

Where the ATP total is less than the cleanup estimate but greater than the cost recovery floor, then the FRM notes the file that cost recovery should proceed for the site upon completion of the State Lead action (or after the time in which at least the amount to be recovered has been obligated). The FRM also indicates in the decision memo to the appropriate RO that RO staff should track all time spent on the site for cost recovery purposes. The appropriate Department cost recovery procedure will be applied to determine the amount subject to recovery.

6.3.3 ATP Total At Least Equal to Cleanup Estimate or Civil Charge

Where the ATP total is greater than or equal to the cleanup cost estimate, the RP is considered able to pay and must proceed with the next phase of cleanup, in the case of a petroleum release. This is true even where the ATP total is less than the cost recovery floor, but nonetheless, greater than or equal to the estimated cost of the next phase. If the Ability to Pay determination follows after the site has been referred to the State Lead program, the FRM notes in the file that the Department should initiate a cost recovery action to recoup the State Lead funds spent on the site. The FRM

also indicates in the decision memo to the appropriate RO that RO staff should track all time spent on the site for cost recovery purposes.

In an enforcement action, where the ATP total is greater than or equal to the calculated civil charge, the RP is considered able to pay and the results of the analysis will be communicated to the RO. The RO will evaluate the appropriate civil charge in accordance with the Enforcement Manual

7. ATP Recommendation

In the case of a petroleum release or discharge of oil, OFA staff provides a written indication of ability to pay to the RP with a copy to the appropriate Regional Office (see Appendix 7 for sample letter). OFA staff also provide a written indication of ability to pay to the appropriate RO via memorandum. Upon receipt of a memorandum indicating inability to pay, RO staff should investigate further to locate other possible RPs for the site. If the FRM performs the Ability to Pay analysis pursuant to an enforcement action, OFA will provide a written summary of the analysis to the RO enforcement specialist via memorandum only, unless the RO requests otherwise.

8. Subsequent Applications

In the case of a petroleum release, if the Department determines that an RP is able to pay and thus must undertake owner led corrective action, the RP may file a second ability to pay application during the course of the cleanup (and subsequent applications, where applicable) if the applicant articulates changed circumstances that have resulted in the deterioration of its financial condition since the time of the prior application.

9. Suspensions

Where an RP has failed to submit the required application materials by the filing deadline (usually, within thirty (30) days of the date the claim form was mailed) and has failed to obtain an extension of the deadline, the FRM may suspend any further analysis, declare the RP able to pay, and refer the RP to the Regional Office for appropriate action. In the case of a petroleum release, while RPs are participating in the Ability to Pay Program and are in compliance with the requirements of the Program (i.e., have not missed applicable filing deadlines), remediation activity requirements and report filing deadlines with respect to the occurrence for which the Ability to Pay application was issued are held in abeyance. RO remediation and report filing deadlines may run concurrently with Ability to Pay application filing deadlines.

10. File of Record

Upon receipt of a request for an ability to pay application, OFA staff will establish an ability to pay file. The Department treats all tax returns and other documents containing information

derived from tax returns as confidential and exempt from Virginia Freedom of Information Act requests pursuant to Section 2.2-3705 of the Virginia Freedom of Information Act. Section 2.2-3705 Va. Code Ann. (2001). All information and analyses will be maintained in each applicant's file for a period of 5 years or until site closure, whichever is longer. After this time, the file will be destroyed.

Director, Division of Waste Program
Coordination

Date

ABILITY TO PAY GUIDANCE
PARTNERSHIPS

APPENDIX 1
GENERAL PARTNER LIST

GENERAL PARTNER LIST

ABILITY TO PAY GUIDANCE
PARTNERSHIPS

APPENDIX 2
ABILITY TO PAY
APPLICATION
INSTRUCTIONS

ABILITY TO PAY APPLICATION INSTRUCTIONS

Applicant Name:	
Address:	
Telephone Number:	(H) _____ (W) _____
Date Application Sent:	
PC#/Permit # and Site Name	

To complete the Ability to Pay application, you must submit the documents marked below:

INDIVIDUAL/PARTNERSHIP APPLICANTS

- _____ 1. A **signed** copy of your three most recent federal individual income tax returns including **all schedules**.
- _____ 2. A copy of the W-2 forms and 1099 forms used to support your most recent tax returns.
- _____ 3. A completed, **signed and notarized** Ability to Pay Claim form.
- _____ 4. A copy of the demonstration of financial responsibility for the year in which the release was reported to DEQ.
- _____ 5. A completed, signed and notarized Certification of Annual Gallonage.
- _____ 6. A completed, signed and notarized Insurance Certification form and a complete copy of the insurance policy for the affected property.
- _____ 7. A completed, signed and notarized AST Storage Capacity Affidavit.
- _____ 8. A list of all general partners, using the form enclosed.
- _____ 9. Other: _____

BANKRUPT APPLICANTS

- _____ 1. An original **signed and notarized** Ability to Pay Bankruptcy Application form.

- _____ 2. A date-stamped copy of your Bankruptcy Petition.
- _____ 3. A copy of the demonstration of financial responsibility for the year in which the release was reported to DEQ.
- _____ 4. A completed, signed and notarized Insurance Certification form and a complete copy of the insurance policy for the affected property.
- _____ 5. A completed, signed and notarized Certification of Annual Gallonage.
- _____ 6. A completed, signed and notarized AST Storage Capacity Affidavit.
- _____ 7. Other: _____

CORPORATE/PARTNERSHIP APPLICANTS

- _____ 1. A completed, **signed and notarized** Corporate Ability to Pay Claim form and all documents requested in the Claim form.
- _____ 2. A completed, signed and notarized Partnership Ability to Pay application form and all documents requested in the application form.
- _____ 3. A copy of the demonstration of financial responsibility for the year in which the release was reported to DEQ.
- _____ 4. A completed, signed and notarized Insurance Certification form and a complete copy of the insurance policy for the affected property.
- _____ 5. Other: _____

LOCAL GOVERNMENT APPLICANTS

- _____ 1. A completed, **signed and notarized** Local Government Ability to Pay Claim Application and all documents requested in the Application form.
- _____ 2. Other: _____

FILING DEADLINE

The deadline for submission of these documents is _____ calendar days from the date these instructions were sent to you.

ADDITIONAL REQUIREMENTS

If you are involved in a site remediation for a petroleum release, depending on the results of the initial analysis, you may be required to submit estimates of the cost of performing the next phase of corrective action required at the site. If estimates are required, the Department will contact you.

WHERE TO SUBMIT APPLICATION AND OBTAIN ASSISTANCE

Please submit all application materials to: **Department of
Environmental Quality, Office of Financial Assurance 5th Floor, P. O. Box 10009, Richmond, VA
23240-0009.**

If you require assistance in completing the application materials, please call
_____ at _____.

SPECIAL INSTRUCTIONS

cc: Regional Office:

____ PRO
____ TRO
____ NRO
____ WCRO
____ SCRO
____ SWRO
____ VRO

____ Other Regional Office Staff: _____

Rev. December 17, 2003

ABILITY TO PAY GUIDANCE
PARTNERSHIPS

APPENDIX 3
PARTNERSHIP
APPLICATION FORM

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
PARTNERSHIP ABILITY TO PAY APPLICATION

Name of Partnership	
Address	
Telephone No.	
PC/permit/registration #	

INSTRUCTIONS

1. Please complete the information in the preceding box and complete Attachments 1 through 9.
2. **BY SUBMITTING THIS ABILITY TO PAY APPLICATION, IN THE EVENT THE SITE IS REFERRED FOR STATE LEAD CORRECTIVE ACTION, THE APPLICANT AGREES TO GRANT THE COMMONWEALTH OF VIRGINIA, ITS EMPLOYEES, AGENTS AND CONTRACTORS ALL NECESSARY ACCESS TO THE CONTAMINATED SITE AND SURROUNDING PREMISES TO UNDERTAKE ALL NECESSARY INVESTIGATION AND REMEDIATION ACTIVITIES, INCLUDING BUT NOT LIMITED TO INSTALLATION, SAMPLING AND MAINTENANCE OF MONITORING WELLS; SOIL SAMPLING; INSTALLATION AND MAINTENANCE OF REMEDIATION EQUIPMENT; TESTING AND REMOVAL OF UNDERGROUND STORAGE TANKS; SURVEYING OF BUILDINGS FOR VAPOR IMPACTS; AND REMOVAL OF CONTAMINATED SOIL AND OTHER MEDIA.**
3. An authorized partner of the partnership must complete, sign and date the Declaration which follows. This signature must be notarized.

DECLARATION

I declare that the information provided to the Department of Environmental Quality for the Ability to Pay application of [fill in partnership name] _____ is true, correct and complete to the best of my knowledge and belief.

By: _____ Title: _____

Name: _____ Date: _____

Commonwealth/State of _____)
 _____) to wit:
 City/County of _____)

Subscribed and sworn to before me by _____ on this ____ day of _____, 200__.

Notary Public

My Commission expires: _____

ATTACHMENT 1 DOCUMENTATION WHICH MUST BE SUBMITTED

Instructions: Please submit copies of the documents listed in the "Document Required" column. Submission of the tax return documents listed in item #1 and lease agreements listed in item #2 is mandatory.

DOCUMENT REQUIRED

If you have not submitted the
required document, please explain

1. Copies of the 3 most recent signed federal income tax returns with all schedules attached. If any of the returns were audited or adjusted by the IRS, please explain adjustments and/or audit results.
2. Copies of all lease agreements where the lessor or the lessee is a "related party." Please see the instructions for Attachment 7 for the definition of "related party."
3. A copy of the partnership agreement.
4. Copies of the 3 most recent annual financial statements (Balance Sheets, Income Statements and Cash Flow Statements). You must include copies of the auditor's letters.
5. Copies of all documents prepared to support any loan applications the partnership made in the most recent year.
6. Copies of all documents assessing the partnership's current financial condition or future plans, including cash flow projections and plans for major expenditures.
7. Copies of any appraisals of assets made in the most recent year.

ATTACHMENT 2 DESCRIPTION OF THE NATURE OF THE PARTNERSHIP'S
BUSINESS

Instructions: In the space provided below, please provide a description of the nature of the partnership ability to pay applicant's business.

ATTACHMENT 3 PARTNERSHIP STRUCTURE

Instructions: Please list all partners, their percentage ownership, and whether they are general or limited partners.

Partner Name	Percent Owned	Check here if General Partner	Check here if Limited Partner

ATTACHMENT 4 PARTNERSHIP ASSETS

Instructions: Please provide a list of the partnership ability to pay applicant's assets, the fair market value of the assets, liabilities against the assets and a description of how the assets are used in the partnership's business.

<u>Asset</u>	<u>Fair Market Value</u>	<u>Liabilities</u>	<u>Description of How Asset is Used</u>
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ATTACHMENT 5 REAL PROPERTY

Instructions: Please provide a list of the partnership ability to pay applicant's real property holdings, the tax assessed value of the real property and the purpose for which the real property is used.

**Description of
Real Property**

**Tax Assessed
Value**

**How Real Property
Is Used**

ATTACHMENT 6 PARTNER SALARIES/DISTRIBUTIONS

Instructions: Please provide a list of the salaries/distributions paid to the partnership ability to pay applicant's partners, the locality in which each partner resides or resided and the number of persons in each partner's household. Please note that this information must be provided for each year corresponding to the years for which you submitted tax returns as requested in Attachment 1.

<u>Year</u>	<u>Partner Name</u>	<u>Distribution/ Salary</u>	<u># Persons in Household</u>	<u>City/County of Residence</u>
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ATTACHMENT 7 LOANS TO RELATED PARTIES

Instructions: Please provide a list of the outstanding loan balances on all loans from the partnership ability to pay applicant to related parties. Related parties include the following: (1) general partners; (2) limited partners; (3) relatives of general and limited partners; and (4) entities in which any partner owns at least a 50% interest.

<u>Name of Borrower</u>	<u>Relationship to Partnership</u>	<u>Current Loan Balance</u>
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ATTACHMENT 8 TRANSACTIONS WITH RELATED PARTIES

Instructions: Please provide a description of all transactions with "related parties" (see instructions for Attachment 7 for the definition of "related parties") for each year for which tax returns are being submitted.

<u>Year</u>	<u>Name of Related Party</u>	<u>Relationship to Partnership</u>	<u>Description of Transaction</u>
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ATTACHMENT 9 GALLONAGE/STORAGE CAPACITY AFFIDAVIT
(for use in the case of a petroleum release or discharge of oil)

Instructions: Please complete the appropriate affidavit.

If the release occurred from an underground storage tank (UST) which stored heating oil for use on the premises where stored, please check here: _____. No gallonage or storage capacity affidavit is needed.

If the release occurred from an UST which was used for any purpose other than storing heating oil for use on the premises, please use the gallonage affidavit and report the gallons purchased for all regulated USTs the partnership owned or operated in Virginia for the one year period preceding the date the release was reported to DEQ.

If the discharge occurred from an aboveground storage tank (AST) with a capacity of 5,000 gallons or less and which was used to store heating oil for use on the premises where stored, please check here: _____. No gallonage or storage capacity affidavit is needed.

If the discharge occurred from any other type of AST, please use the AST storage capacity affidavit.

PLEASE SEE ATTACHED FORMS

CERTIFICATION OF ANNUAL GALLONAGE

PC# _____

NOW COMES _____, who being duly sworn, deposes and says:
(Name of Owner/Operator)

I, _____ of
(Name of Owner/Operator)

_____ declare that:
(Address)

The number of gallons pumped from _____ to _____
(start date) (end date)

through all regulated underground storage tanks which owner/operator owns and operates in the
Commonwealth of Virginia is _____.
(Number of Gallons)

I swear that the declarations in the preceding affidavit are true to the best of my knowledge and belief.

(Print Name of Owner/Operator)

By: _____
(Signature)

State of _____)
City/County of _____) to wit:

Subscribed and sworn to before me by _____ on this _____
day of _____, 200__.

Notary Public

My Commission expires: _____

CERTIFICATION OF AST FACILITY STORAGE CAPACITY

Commonwealth of Virginia)
)
City/County of _____) to wit:

NOW COMES _____, who being duly sworn,
deposes and says:

I am the operator of _____ aboveground storage tanks located at the facility
(number)
referenced by PC#_____, and I declare that:

1. The net annual profits for this operator are less than or equal to \$10 million: (circle one)
Yes or No

a. If you circled "Yes," please complete the following:

The number of gallons of storage capacity for all ASTs at this facility at the time the AST discharge was reported to the Department of Environmental Quality was _____.

b. If you circled "No," please complete the following:

The number of gallons of storage capacity for all ASTs at all Virginia facilities containing more than 25,000 gallons of storage capacity at the time the AST discharge was reported to the Department of Environmental Quality was _____.

2. This release was from a tank containing a product subject to the fee charged by the Commonwealth of Virginia under Section 62.1-44.34:13 of the State Water Control Law.
3. I certify that this facility is in compliance with all applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.
4. I swear that the declarations in the preceding affidavit are true and correct to the best of my knowledge and belief.

(Facility Operator)

Commonwealth of Virginia)
)
City/County of _____) to wit:

Subscribed and sworn to before me by _____, on this
_____ day of _____, 200_____.

Notary Public

My commission expires: _____.

ABILITY TO PAY GUIDANCE
PARTNERSHIPS

APPENDIX 4
INSURANCE
CERTIFICATION

INSURANCE CERTIFICATION

I, the undersigned, hereby certify that to the best of my knowledge and belief

(check one of the following):

_____ insurance is available (attach a copy of the policy, declarations page and endorsements)

_____ insurance is not available to cover costs associated with the environmental contamination at the site referenced by

PC#/permit #/site name _____.

I warrant and represent that I have the authority to make this certification.

Signature

Date

Name (please print)

Title (if any)

THIS STATEMENT MUST BE NOTARIZED

State/Commonwealth of _____)

City/County of _____)

to wit:

Subscribed and sworn to before me by _____ on this
____ day of _____, 200__.

Notary Public

My commission expires: _____.

ABILITY TO PAY GUIDANCE
PARTNERSHIPS

APPENDIX 5
ABILITY TO PAY
SAMPLE DECISION
LETTER

(Letter to RP in UST Program deemed Unable to Pay)

(Date)

(Applicant Name)

(Address)

Re: Ability to Pay Determination; PC# _____; (Site Name)

Dear (Applicant Name):

The Department of Environmental Quality (DEQ) has completed an assessment of the Ability to Pay application you submitted and our analysis indicates that you are unable to pay for corrective action costs. DEQ will seek to identify other responsible parties for this site. If no other responsible parties who are financially capable of performing the remediation are identified, the Commonwealth of Virginia may undertake the necessary corrective action procedures, up to total per occurrence costs of \$1 million.

Please note that DEQ may use either state or federal funds for corrective action at this site. If federal funds are used, federal law may require you to complete another Ability to Pay application after the completion of the corrective action to determine whether you must repay federal funds expended for remediation of the site. The Department also has the option of pursuing recovery of any state funds expended for remediation from you as well, in the event your financial condition changes so that you are able to pay any corrective action costs.

If you have any questions regarding this matter, please contact me at (804) 698-XXXX.

Sincerely,

(Name)

Financial Responsibility Manager

cc: RO contact

(Letter to RP in UST program deemed Able to Pay)

(Date)

(Applicant Name)

(Address)

Re: Ability to Pay Determination; PC# _____; (Site Name)

Dear Applicant Name:

The Department has completed a review of your Ability to Pay application, and our analysis indicates that you are able to pay the corrective action costs associated with cleaning up the referenced petroleum release.

[Give broad explanation of why RP was determined able to pay]

Please be aware that for eligible releases you may submit for reimbursement from the Virginia Petroleum Storage Tank Fund of reasonable costs for eligible activities and materials pre-approved and verified by [RO name] Regional Office staff. For releases from a heating oil tank, you must meet a financial responsibility requirement of \$500 with approved costs before any reimbursement will be issued. To qualify for reimbursement, please follow the procedures contained in the Department of Environmental Quality's Reimbursement Guidance manual. The manual may be downloaded from the Department's Web site at <http://www.deq.state.va.us/tanks/reimbrs.html> or you may contact me for a copy.

Please feel free to contact me at [number] if you have any questions,

Sincerely,

[Financial Responsibility Manager]

Enc.